

# The CASE of Henry Long Esq;

**J**OHN Long, late of Little *Chiverell*, in the County of *Wilts*, Esq; being seized in fee simple of divers Messuages, Lands, and Tenements lying in *Melksham* in the said County, and having no Wife, Child, Brother, or Sister then living; but having divers Nephews, and being desirous to Settle his said Lands and Premises in the Male Line of his Family according to their Heirship, by his last Will and Testament in Writing; bearing Date *July* the Twentieth 1676. did devise all his Estate in *Melksham* aforesaid (except two little Tenements thereby given to *John Philipps*) unto his Nephew *Henry Long*, who was eldest Son of *Richard Long* the Testators eldest Brother, for and during the Natural Life of him the said *Henry Long*, who was his Heir at Law, and from and after his Decease, to the first Son of the Body of the said *Henry Long* lawfully Begotten, and the Heirs Males of the Body of such first Son lawfully Issuing; and for default of such Issue, to the 2d. 3d. 4th. 5th. 6th. 7th. and every other Son of the Body of the said *Henry Long*, lawfully to be Begotten successively and respectively as they should be in Priority of Birth and Seniority of Age, and to the Heirs Males of their Bodies successively and respectively Issuing the Elder of such Sons, and the Heirs Males of his Body Issuing, being always preferred before the younger, and the Heirs Males of his Body Issuing: And for default of such Issue,

To *Richard Long* second Son of the Testators Brother *Richard* for his Life, and from and after his Decease to his 1st. 2d. 3d. 4th. 5th. 6th. 7th. and every other Son in the same manner as above. And for default of such Issue, then

To no less then nine several other Nephews of the Testator, particularly named in the said Will, in the same manner; and especial care is taken by the Testator, that they should all take according to their Heirship.

Upon the Testators Death, which was soon after this Will was made, *Henry* entred upon this Estate, and inter-married with *Ann Long*, Daughter of *John Long*, late of *South Wraxall* in *Wilts*, Esq; by whom he had Issue one Daughter; and about *Lady-day*, 1687. *Henry* dyed, leaving his said Wife enseint with a Son who was born within Seven Months after his Fathers Death, and Baptized by the Name of *Henry*.

Upon the death of *Henry* without any Son, *Richard Long* being the next in Remainder, entred and enjoyed these Lands, but on the Birth of *Henry* the now *post humus* Infant; *Richard* well knowing the Intent of his Uncle the Testators Will, laid no further claim to the Premises, but suffered *Ann* the Widow of *Henry*, and Mother of *Henry* the *post humus* Infant, to enjoy this Estate as Guardian to her said Son, who hath enjoyed it so ever since the Birth of her Son without any Interruption, till now lately *Richard* hath commenced an Action of Ejectment for this Estate, on which Action there is a special Verdict found, containing all this matter.

It was and must be agreed, That if this Child had been born in the life time of his Father, the Title had been in him; but only for the reason he was not Born till after his Fathers Death, Judgment is given for the said *Richard Long*.

Whereas the Intent of the Testator is the main and only thing considerable in a Will, and the intent in this Case is Notorious; That the Son of *Henry* whether born before or after his Fathers Death, should enjoy this Estate, as appears by the great care taken to limit it to so many Nephews, according to Heirship.

And whereas a *post humus* Son is as much an Heir as one born in the life of his Ancestor; and constructions of Wills ought to be in favour of an Heir at Law, and the Testators meaning; in regard Men in extremities are not supposed to have Counsel for their assistance: And whereas this Will was made in the Testators last Sickness, and for the Benefit of his Heir, 'twill be hard to frustrate the intent of his Will, and wrest his meaning to disinherit his Heir; when by the Laws of all Nations, a Will is nothing but a Declaration of the Parties Mind, how, and by whom his Estate shall be enjoyed, and this is as plain here as words can make it.

The Consequence of such a Judgment, will be to give *Westminster-Hall* a power not only to expound but to make Mens Wills, and to dispose of their Estates contrary both to their words and meaning, since both are manifestly plain in this last, in favour of the said *Henry Long* the Infant.



**The CASE**  
**OF**  
**Henry Long, Esq;**

To be heard on *Monday*, the  
17th. of *December*, 1694.